**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.179 OF 2006**

Bharat Shetty ..Petitioner.

Vs.

Yogesh A. Mehta ..Respondent.

Mr.Snehal Shah i/b.Lex Consultus for the Petitioner.
Mr.A.K.Chauhan for the Respondent.

**CORAM : S.J. VAZIFDAR, J.**
**DATED : 13TH JUNE, 2006**

**P.C. :**

By consent, the petition is admitted and heard finally. The Petitioner is permitted to proceed on the basis of denials.

2. The Petitioner has filed this petition under section 9 of the Arbitration and Conciliation Act, 1996. A MOU dated 21.1.2006 was entered into between the Petitioner and the Respondent. The Petitioner claimed to have certain rights in respect of the property. The Respondent had denied such a right initially. These disputes and differences were resolved by the MOU.

3. Clauses 1 and 2 of the said MOU dated 21.1.2006

read as under :

> "1. In full and final settlement of the claim of the party of the other pat on the suit property, the party of the one part herein assign and transfer his right title and interest in Flats NO.301/302 admeasuring / sq. ft. in building Known as Anant Santai Building situated on Plot of land bearing C.T.S. H142, A2, Plot No.55, 18 C-1-village Bandra, Besant Road Santacruz (W), Mumbai-54 (herein after referred as said Flats) and one open car parking more particularly described in the Schedule hereunder written on the terms and conditions set out herein."
>
> "2. In consideration of transfer of the said Flats along with one open Car parking Party of Other part will handover the exclusive possession of the temple portion and open space thereto around the said Saket bunglow which presently is in the possession of the part of the other part by virtual of irrevocable and registered power of Attorney dated 20.5.2003 executed by Late Dhillon P. Shah and Shivangi D. Shah."

4. There is no dispute that the Petitioner is entitled to protection in terms of prayer (c) of the petition which pertains to the said flat. This is obviously because if the Petitioner succeeds in the arbitration proceedings he will be entitled to the said flat. The only dispute is with respect to prayer (b) of the petition, which reads as under :

> "b. pending the hearing and final disposal of Arbitration proceeding between Respondent and Petitioner restrain the Respondent by an order of injunction inter alia restraining Respondent himself, his agent, servant or any person claiming through the Respondent from taking forcible possession from the Petitioner or his security agent of the property in the possession of the Petitioner viz. Temple and open space adjacent to the Bunglow."

5. The Petitioner is at this stage, entitled to protection in terms of prayer (b) in view of the stand taken by the Respondent to the effect that the MOU is void and, in any event, cannot be implemented.

6. In the event of the Respondent succeeding in his contention before the arbitrator, the Petitioner may be entitled to seek restitution. This, ofcourse, is a question for the arbitrator to decide or to be decided in appropriate proceedings. The Petitioner’s rights as on the date of the MOU therefore, prima-facie, requires to be protected. This is further supported by clauses 11 and 13 of the agreement, which read as under :

> "11. It is also expressly agreed between the parties hereto that till the execution of deed of transfer said flats the other part will be in physical possession of the open place and temple on the suit property."
>
> "13. In the event of non performance of this MOU, either parties shall revert back to their original respective positions."

7. In the circumstances, the petition is made absolute in terms of prayers (b) and (c).

8. Mr.Shah, the learned counsel appearing on behalf of the Petitioner undertakes to do all things necessary for the purpose of implementing the arbitration clause in the MOU forthwith.

The petition is disposed of accordingly.